John Kopp and Natalie Kopp d/b/a N & J Construction, a sole proprietorship *and* Local 9, Michigan International Union of Bricklayers and Allied Craftworkers, AFL–CIO. Case 7–CA–49046

September 12, 2006

DECISION AND ORDER

BY MEMBERS SCHAUMBER, KIRSANOW, AND WALSH

On June 22, 2006, Administrative Law Judge Bruce D. Rosenstein issued the attached decision. The General Counsel and the Charging Party each filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions,[1] and to adopt the recommended Order as modified.[2]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, John Kopp and Natalie Kopp d/b/a N & J Construction, a sole proprietorship, Metamora, Michigan, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Insert the following as paragraph 1(a) and reletter the subsequent paragraphs.

"(a) Refusing to hire job applicants because of their membership in Local 9, Michigan International Union of Bricklayers and Allied Craftworkers, AFL–CIO or any other union, or because of their union activities or sympathies."

2. Substitute the following for new paragraph 1(d).

"(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act."

3. Substitute the attached notice for that of the administrative law judge.

Dated, Washington, D.C. September 12. 2006

Peter C. Schaumber, Member

Peter N. Kirsanow, Member

Dennis P. Walsh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal Labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to hire job applicants because of their membership in Local 9, Michigan International Union of Bricklayers and Allied Craftworkers, AFL–CIO or any other union, or because of their union activities or sympathies.

[1] In the absence of exceptions, we adopt the judge's conclusion that the Respondent violated Sec. 8(a)(3) and (1) by refusing to hire union applicant Charles Coburn, and that the Respondent violated Sec. 8(a)(1) by informing Coburn that it would not hire him because he was a member of the Union and by telling employees that it would not consider for hire applicants who "looked" and "acted like" union laborers. In the absence of exceptions, we also adopt the judge's conclusion that the Respondent did not violate Sec. 8(a)(3) and (1) by refusing to consider Coburn for hire or by refusing to consider for hire or hire an unknown individual.

[2] In accordance with the General Counsel's exceptions, we have modified the judge's recommended Order to reflect the violations found and to more closely conform to the Board's standard remedial language. We have also substituted a new notice to employees to comport with these modifications.

In its exceptions, the Charging Party renews its request for litigation expenses, contending that certain of the Respondent's defenses were frivolous. We affirm the judge's decision to deny the request because this case does not present the level of "truly frivolous litigation" that warrants such an "extraordinary" remedy. *Frontier Hotel & Casino*, 318 NLRB 857, 864 (1995), enf. denied *Unbelievable Inc. v. NLRB*, 118 F.3d 795 (D.C. Cir. 1997); *Waterbury Hotel Management LLC*, 333 NLRB 482 (2001) (denying costs where "[t]he Respondent's defenses, although generally meritless, were debatable rather than frivolous and therefore do not warrant the extraordinary remedy requested"), enfd. 314 F.3d 645 (D.C. Cir. 2003).

WE WILL NOT inform job applicants that we will not consider them for hire because they are union members.

WE WILL NOT tell employees that we will not consider for hire job applicants who look and act like union laborers.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights set forth above.

WE WILL, within 14 days from the date of the Board's Order, offer Charles Coburn immediate instatement to the position for which he applied, or, if that position no longer exists, WE WILL offer him employment in a substantially equivalent position, without prejudice to seniority or any other rights or privileges he would have enjoyed absent the discrimination against him.

WE WILL make Charles Coburn whole for any loss of earnings and other benefits he may have suffered as a result of our unlawful refusal to hire him, less any net interim earnings, plus interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful refusal to hire Charles Coburn, and WE WILL, within 3 days thereafter, notify Coburn in writing that this has been done and that the refusal to hire will not be used against him in any way.

JOHN KOPP AND NATALIE KOPP D/B/A N & J CONSTRUCTION, A SOLE PROPRIETORSHIP

Patricia A. Fedewa, Esq., for the General Counsel.
John E. Melton II, Esq., of Pontiac, Michigan, for the Respondent-Employer.
John G. Adam, Esq., of Royal Oak, Michigan, for the Charging Party.

DECISION

STATEMENT OF THE CASE

BRUCE D. ROSENSTEIN, Administrative Law Judge. This case was tried before me on April 17, 2006, in Detroit, Michigan, pursuant to a complaint and notice of hearing in the subject case (complaint) issued on February 28, 2006, by the Regional Director for Region 7 of the National Labor Relations Board (the Board). The underlying charge was filed on November 1, 2005[1] by Local 9, Michigan International Union of Bricklayers and Allied Craftworkers, AFL–CIO (the Charging Party or Union) alleging that John Kopp and Natalie Kopp d/b/a N & J Construction, a sole proprietorship (the Respondent or Employer), has engaged in certain violations of Section 8(a)(1) and (3) of the National Labor Relations Act (the Act). The Respondent filed a timely answer to the complaint denying that it had committed any violations of the Act.

[1] All dates are in 2005 unless otherwise indicated.

Issues

The complaint alleges that the Respondent engaged in independent violations of Section 8(a)(1) of the Act including informing an employee/applicant that it would not hire him because he was a member of the Union and telling employees that the Respondent would not consider employees for hire because they appeared to be supporters or members of a Union. Additionally, the complaint alleges that the Respondent engaged in a number of violations of Section 8(a)(1) and (3) of the Act by refusing to consider for hire or hire employee/applicants because of their membership in and support for the Union.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel, Charging Party and the Respondent, I make the following[2]

FINDINGS OF FACT

I. JURISDICTION

The Respondent is a sole proprietorship engaged in the building and construction industry as a masonry contractor at its facility in Metamora, Michigan, where it annually had gross revenues in excess of $100,000. During this same period of time, it provided services valued in excess of $50,000 to Campbell Manix Incorporated, which, in turn, purchased goods and materials valued in excess of $50,000 from points outside the State of Michigan and caused those goods and materials to be delivered directly to its Michigan locations. The Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Background

Respondent, as a small nonunion masonry contractor, normally employs a complement of five individuals including owner and supervisor John Kopp. Two of these employees and Kopp perform bricklayer duties while the other two employees serve as general laborers.[3]

[2] The General Counsel and the Charging Party argue in their post-hearing submissions that because the Respondent's defense to the complaint allegations are totally frivolous that an award of attorney fees and costs is appropriate in this case. They rely on a number of cited cases including the Board's decision in *Alwin Mfg. C.o.*, 326 NLRB 646, 647 (1998). I deny the General Counsel and the Charging Party's request for litigation costs in this case. First, the subject case does not present the bad faith or history of violations that occurred in the *Alwin* proceeding. Second, while I ultimately rejected some of the defenses proffered by the Respondent in this matter, I do not find that the Respondent exhibited bad faith in actions leading to the litigation or in the conduct of the subject litigation. Moreover, I dismissed a number of the allegations of the General Counsel's complaint finding that the Respondent did not violate the Act as alleged.

[3] Employees Michele Kalen and Anthony Florney are the two bricklayers in addition to Kopp. The laborers are Robert Wiggins and Matthew Greer. Kalen was hired on or about August 1 at the Fenton Day Care jobsite and apprised Kopp that she was a member of the Union.

In or around the first 3 weeks in August 2005, Union Field Representative Michael Lynch visited the Fenton Day Care jobsite where the Respondent was working. He informed Kopp that the Union wanted to organize his employees and sought Kopp's agreement to become a union contractor. Kopp resisted these efforts and the Union intermittently picketed the Fenton Day Care jobsite informing the public that the Respondent was a nonunion contractor. Apparently, a Board representation petition was filed but it was ultimately withdrawn.

On or about August 1, Respondent commenced work at the Little Peoples Day Care construction site in Davison, Michigan.

On August 19, union journeyman bricklayer Charles Coburn visited the Davison jobsite in search of work. He introduced himself to Kopp and inquired whether the Respondent needed an experienced bricklayer. According to Coburn, Kopp asked him whether he was in the Union and if he had a union card. Kopp told Coburn that somebody told him he could be sued if he hired union people. Kopp requested that Coburn return to the jobsite in several days so that he could check with his lawyer whether he could be sued for hiring union members. Coburn immediately contacted Union Representative Lynch, who apprised him that the questions asked by Kopp violated the law. Lynch requested that when Coburn returned to the Davison jobsite to check on employment opportunities, that he tape-record his conversation with Kopp.

On August 23, Coburn returned to the Davison jobsite and engaged Kopp in a conversation that he surreptitiously tape-recorded (GC Exh. 5). Coburn then sent the tape to Lynch who in turn provided it to the union attorney.

On or about August 23, Lynch contacted Union apprentice Brandon Moquin and requested him to visit the Davison jobsite for the purpose of seeking employment. Lynch instructed Moquin, if asked, to deny that he was a union member. Accordingly, Moquin visited the Davison jobsite on August 23, and spoke to Kopp about employment opportunities as a mason/bricklayer. While Moquin was talking to Kopp, a number of employees were congregated in the immediate vicinity and Kalen asked Moquin whether he was a union bricklayer. Moquin, said no. Kopp said, "So you are not a Union member." Moquin replied, "no." Kopp instructed Moquin to call him in a couple of days. On August 25, Moquin telephoned Kopp to inquire whether he would be hired. Kopp informed Moquin that he was hired and to start work the next day.[4] Moquin reported to work on the morning of August 26. He remained employed at the Respondent from August 26 to September 2, when he was laid off by Kopp due to the winding down of the Davison job. On that day, Kopp informed Moquin that he anticipated future jobs and urged Moquin to stay in touch if he wanted to work.

B. The 8(a)(1) Allegations

The General Counsel alleges in paragraph 7(a) of the complaint that Respondent, by its agent Kopp on or about August 23, informed an employee/applicant that Respondent would not hire him because he was a member of the Union. In paragraph 7(b) of the complaint, the General Counsel alleges that Kopp, on or about August 26, told employees that he would not consider employees for hire because they appeared to be supporters or members of a union.

1. The August 23 allegation

The evidence discloses that Coburn visited the Davison jobsite on August 19, seeking employment as a bricklayer. Coburn testified that Kopp asked him if he was in the Union and did he have a union card. Kopp denied that he asked Coburn these questions. Rather, Kopp admitted that he told Coburn that the Union previously picketed him at another jobsite and somebody told him that he could get sued if he hired Union people. Kopp told Coburn to check back with him in several days so he could consult with his lawyer about being sued if he hired a union worker. On August 23, Coburn returned to the Davison jobsite to determine whether Kopp would hire him. Kopp greeted Coburn as "You are the Union guy, right." Coburn admitted that he was in the Union and asked if that was a problem. According to the tape-recording (GC Exh. 5), Coburn stated that "So, if I wasn't in the Union; you could put me on." Kopp replied, "I could put you on." Kopp further stated "I do not want to get myself in a world of shit. I can't afford a lawsuit."

The Respondent defends its conduct in not hiring Coburn on its concern that if they hired a union member and did not pay Union wages or comply with contractual provisions including pension, health and welfare and other fringe benefits, it could be sued to recover those emoluments. Additionally, Kopp testified that he also did not hire Coburn because the Union had him shook up during this time. Kopp's stated reason for not hiring Coburn interferes with, restrains, and coerces employees in the exercise of rights guaranteed in Section 7 of the Act. Accordingly, I find that Kopp made the statements discussed above and such conduct is violative of Section 8(a)(1) of the Act.

2. The August 26 allegation

On August 26, Moquin reported to work to commence his first day at the Davison jobsite. He observed Kopp go over to talk with two individuals who arrived on the jobsite in a pickup truck. When Kopp returned to the jobsite where the crew was working, one of the employees asked whether he would hire the person in the pickup truck. Kopp replied no, because he looked and acted like a union laborer.

Kopp testified that the individuals in the pickup truck were the superintendent and another person employed by the general contractor for whom he worked as a subcontractor on the jobsite. Kopp, however, did not deny that he made the statement attributed to him. Nor did the Respondent call any other employees to testify who were working at the jobsite on August 26, to deny that Kopp made the statement including the employee who asked him the question about hiring the person in the pickup truck.

Under these circumstances, I find that Kopp made the statement that he would not hire the person in the pickup truck because he looked and acted like a union laborer. Since such a

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Sometime in late August 2005, Kalen resigned her membership in the Union.

[4] The need for a third bricklayer/mason arose as Kalen had earlier informed Kopp that she would be leaving to start a long-term job in late August 2005.

statement violates Section 7 of the Act, I find that the Respondent violated Section 8(a)(1) of the Act.

C. The 8(a)(1) and (3) Allegations

In *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F. 2d 899 (1st Cir. 1981), cert denied 455 U.S. 989 (1982), the Board established an analytical framework for deciding discrimination cases turning on employer motivation. The General Counsel must persuasively establish that the evidence supports an inference that protected conduct was a motivating factor in the employer's decision.[5] In a refusal to hire case, the General Counsel specifically must establish that each alleged discriminatee submitted an employment application, was refused employment, was a union member or supporter, was known or suspected to be a union supporter by the employer, who harbored antiunion animus, and who refused to hire the alleged discriminatee because of that animus. *Big E's Foodland*, 242 NLRB 963, 968 (1979). Inference of animus may be inferred from the total circumstances proved and in some circumstances may be inferred in the absence of direct evidence. *Fluor Daniel, Inc.*, 304 NLRB 970 (1991). Once that is accomplished, the burden shifts to the employer to persuasively establish by a preponderance of the evidence that it would have made the same decision even in the absence of protected activity. *T&J Trucking Co.*, 316 NLRB 771 (1995). The Board in *FES*, 331 NLRB 9 (2000), supplemented by 333 NLRB 66 (2001), enfd. 301 F. 3d 83 (3d Cir. 2002), determined that the General Counsel must show in a discriminatory refusal to-hire violation the following at the hearing on the merits. First, that the respondent was hiring, or had concrete plans to hire. Second, that the applicants had experience or training relevant to the announced or generally known requirements of the positions for hire, or in the alternative, that the employer has not adhered uniformly to such requirements, or that the requirements were themselves pretextual or were applied as a pretext for discrimination. Third, that antiunion animus contributed to the decision not to hire the applicants. If the respondent asserts that the applicants were not qualified for the positions it was filling, it is the respondent's burden to show, at the hearing on the merits, that they did not possess the specific qualifications the position required or that others (who were hired) had superior qualifications, and that it would not have hired them for that reason even in the absence of their union support or activity. To establish a discriminatory refusal-to-consider violation, pursuant to *FES*, supra, the General Counsel bears the burden of showing the following at the hearing on the merits: (1) that the respondent excluded applicants from a hiring process; and (2) that antiunion animus contributed to the decision not to consider the applicants for employment. Once this is established, the burden will shift to the respondent to show that it would not have considered the applicants even in the absence of their union activity or affiliation.

The General Counsel alleges in paragraph 8 of the complaint that the Respondent, on or about August 23, by Kopp, refused to consider for hire or hire employee/applicant Charles Coburn.

The General Counsel alleges in paragraph 9 of the complaint that the Respondent, on or about August 26, by Kopp, refused to consider for hire or hire an employee/applicant whose name is presently unknown.

1. The August 23 allegation

There is no dispute that the Respondent was looking to hire an experienced bricklayer.

Indeed, Kopp admitted this fact. Moreover, the evidence shows that the need to hire an additional bricklayer arose due to the anticipated departure of Kalen on August 29. Likewise, there is no contention that Coburn who had 14 years experience as a journeyman bricklayer was not qualified to perform the requirements of the position.

I find that antiunion animus contributed to the decision not to hire Coburn for the following reasons. First, Kopp was suspicious of Coburn when he visited the jobsite on August 19 and asked him if he was in the Union and did he have a union card. Such questions explicitly exhibit the mindset of someone who is not inclined to hire an employee/applicant because of his membership in and support for a union. Second, Kopp admitted that he would not hire union workers because he feared a law suit from the Union. Third, in response to Coburn's statement that if he was not in the union you could put me on, Kopp stated, I could put you on. Fourth, Kalen spoke with Kopp immediately after Coburn visited the jobsite on August 19, and informed Kopp that she had worked with Coburn previously. Kalen testified that it was pretty obvious that Kopp knew that Coburn was a union member since they worked on previous union jobs together. Fifth, and particularly significant, the Respondent hired Moquin on August 26. It is specifically noted that Moquin told Kalen, in Kopp's presence, that he was not a Union bricklayer. Kopp then said to Moquin that so, you are not a Union member and Moquin said, no.

For all of the above reasons, and particularly noting that the elements of a violation have been established under *FES*, I find that the Respondent violated Section 8(a)(1) and (3) of the Act when it refused to hire employee/applicant Charles Coburn. In regard to the refusal to consider allegation of the complaint, I conclude that the Act was not violated. In this regard, Kopp did not reject Coburn's application for employment out of hand or exclude him from the hiring process. Rather, he requested that Coburn return to the jobsite so he could first check with his lawyer whether he could be sued for hiring union members. Under these circumstances, I cannot find that the Respondent violated the refusal to consider allegation in the General Counsel's complaint.

2. The August 26 allegation

On August 25, the Respondent hired Moquin with a start date of August 26. Thus, with the pending departure of Kalen, It filled its employee complement for bricklayers. Therefore, on August 26, there was no open position for a bricklayer and the Respondent was not seeking to fill such a position. Additionally, the Respondent did not have any openings for laborer positions as it currently had two long term employees filling

[5] *Manno Electric*, 321 NLRB 278 fn. 12 (1996)

these positions.[6] Moreover, the General Counsel did not present any evidence that an unknown employee/applicant independently sought to be hired or filed an employment application on August 26, and/or visited the Davison jobsite to talk with Kopp about being hired.[7] Nor did the General Counsel rebut Kopp's testimony that the individuals in the pickup truck were not employee/applicants but rather were representatives of the General Contractor on the Davison jobsite.

Under these circumstances, I cannot find that the Respondent refused to consider for hire or hire an unknown employee/applicant. One of the elements of *FES* is to establish that the Respondent was hiring or was seeking applicants on the date alleged in the complaint. Since the Respondent had filled its employee complement on August 25, the Davison jobsite was winding down and Moquin was laid off on September 2, it cannot be established that the Respondent on August 26 refused to consider for hire or hire any employee/applicant for a bricklayer or laborer position.

Therefore, I find that the allegation in paragraph 9 of the complaint must be dismissed.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent violated Section 8(a)(1) of the Act when it informed an employee/applicant that it would not hire him because he was a member of the Union and when it told employees that it would not consider employees for hire because they looked and acted like union laborers.

4. Respondent violated Section 8(a)(1) and (3) of the Act when it refused to hire Charles Coburn.

5. Respondent did not violate Section 8(a)(1) and (3) of the Act when it refused to consider for hire Charles Coburn and when it refused to consider for hire or hire an employee/applicant whose name is presently unknown.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent having discriminatorily refused to hire employee/applicant Charles Coburn, it must offer him employment and make him whole for any loss of earnings and other benefits, computed on a quarterly basis resulting from its failure to hire him, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[8]

ORDER

The Respondent, N & J Construction, a Sole Proprietorship, Metamora, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Informing an employee/applicant that it would not hire him because he was a member of the Union.

(b) Telling employees that it would not consider employees for hire because they looked and acted like union laborers.

(c) In any other manner interfering with, restraining, or coercing employees or applicants for employment in the exercise of rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of the Board's Order, offer Charles Coburn immediate instatement to the position for which he applied or, if that position no longer exists, offer him employment in a substantially equivalent position, without prejudice to seniority or any other rights or privileges to which he would have been entitled had he not been discriminated against.

(b) Make Charles Coburn whole for any loss of earnings and other benefits suffered as a result of the discrimination against him in the manner set forth in the remedy section of the decision.

(c) Within 14 days from the date of the Board's Order, remove from its files any reference to the unlawful refusal to hire Charles Coburn, and within 3 days thereafter notify the employee in writing that this has been done and that the refusal to hire will not be used against him in any way.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Metamora, Michigan, copies of the attached notice marked "Appendix."[9] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the

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[6] I reject the General Counsel's argument that the hiring of "Detone", a nephew of employee Robert Wiggins, establishes that the Respondent was hiring. In this regard, Detone worked only for one day on August 30, and was hired at a time when regular laborer Matthew Greer was off for the day (GC Exh. 3). Moreover, Detone was not retained as a regular employee.

[7] The General Counsel did not present any evidence concerning what was discussed by Kopp and the two individuals in the pickup truck who visited the Davison jobsite on August 26. Thus, it cannot be established whether one or both of these individuals sought employment or filed an employment application with Kopp.

[8] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[9] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since August 23, 2005.

(f) Within 14 days after service by the Region, mail copies of the attached notice marked Appendix,[10] at its own expense, to all employees who were employed by the Respondent at its Davison jobsite at any time from the onset of the unfair labor practices found in this case until the completion of these employees' work at that jobsite. The notice shall be mailed to the last known address of each of the employees after being signed by the Respondent's authorized representative. Additional copies of the notice will be provided to the Union for posting and distribution to Charles Coburn.

(g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C., June 22, 2006

[10] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT inform an employee/applicant that we will not hire him because he was a member of the Union.

WE WILL NOT tell our employees that we will not consider employees for hire because they looked and acted like union laborers.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their Section 7 rights protected by the Act.

WE WILL NOT refuse to hire you because you previously worked for unionized employers and received union wages.

WE WILL offer Charles Coburn immediate instatement to the position for which he applied, or if that position no longer exists, WE WILL offer him employment in a substantially equivalent position, without prejudice to seniority or any other rights or privileges to which he would have been entitled had he not been discriminated against.

WE WILL make Charles Coburn whole for any loss of earnings and other benefits resulting from our failure to hire him, less any net interim earnings, plus interest.

JOHN KOPP AND NATALIE KOPP D/B/A N & J CONSTRUCTION, A SOLE PROPRIETORSHIP